

BEFORE THE INSURANCE COMMISSIONER  
OF THE STATE OF WASHINGTON

In the Matter of the Application  
regarding the Conversion and  
Acquisition of Control of Premera Blue  
Cross and its Affiliates

Docket No. G02-45

Special Master's Decision Following  
In Camera Review of Documents

This matter comes before me pursuant to the Commissioner's "Tenth Order: Order to Produce Documents for *In Camera* Review."

I have considered: 1) documents submitted by Premera for my *in camera* review; which Premera represents to be those documents listed on its privilege logs requested by OIC Staff or OIC consultants; 2) "Premera's Briefing on Privilege Issues for the Special Master," dated July 28, 2003; 3) "Declaration of John P. Domeika Regarding Privilege Log Documents, Submitted to the Special Master *In Camera*," with attachments, dated July 28, 2003; 4) "OIC Staff's Brief on Privilege Issues," dated August 4, 2003; 5) "Intervenors' Response to Premera's Briefing on Privilege Issues for the Special Master," dated August 4, 2003; 6) "Premera's Reply to Privilege Briefing by the OIC Staff and the Intervenors," dated August 11, 2003; 7) "Declaration of John Domeika Regarding Documents on Premera's Third Supplemental Privilege Log," dated August 15, 2003.

Consistent with the Commissioner's Tenth Order, Paragraph 3, the following decision determines, with rationale, which if any privilege log documents or portions of documents are neither privileged nor protected. Documents or portions of documents referenced in this decision are identified by Bates number or range.

Consistent with the Commissioner's Tenth Order, Paragraph 5, Premera maintains its claims of privilege and/or work product protection as to the documents it has produced for *in camera* review. Premera's production of such documents does not waive any privilege or work product protection to which it would otherwise be entitled.

*Discussion.*

Under RCW 5.60.060(2)(a) "An attorney or counselor shall not, without the consent of his or her client, be examined as to any communication made by the client to him or her, or his or her advice given thereon in the course of professional employment." The privilege is important "to afford the client freedom from fear of compulsory disclosure after consulting his legal advisor." *State ex rel. Sowers v. Olwell*, 64 Wn.2d 828, 833.

The attorney-client privilege extends to documents containing privileged communication. *Dietz v. Doe*, 131 Wn.2d 835, 842. The privilege is, however, narrowly construed. The party asserting the privilege has the burden of proving both that an attorney-client relationship exists and that the information sought is within the privilege. *Id.* at 843-844.

The attorney-client privilege applies in the present conversion proceeding: Under RCW 34.05.452(1), the presiding officer in an administrative proceeding (here, the Commissioner) "shall exclude evidence that is excludable on. . . the basis of evidentiary privilege recognized in the courts of this state."

In *Southern California Gas Co. v Public Utilities Commission*, 784 P.2d 1373 (1990), the court held that, in the absence of language creating a specific exemption to the attorney-client privilege, the California State Legislature had enacted provisions granting

broad powers to the Public Utilities Commission under the assumption that the privilege applied. 784 P.2d at 1377, n.10. In Washington, where privileges that are available in judicial proceedings are by statute deemed applicable in administrative proceedings, the Legislature's intent that privilege should apply in conversion proceedings is clear.

*Waiver of privilege.*

The OIC Staff and the Interveners do not challenge Premera's assertion that all of the documents on its privilege logs were created with the intention that they would remain confidential and that Premera and its attorneys have in fact maintained such documents as confidential. No waiver of privilege by virtue of disclosure to third parties has been established.

OIC Staff asserts, however, that Premera has impliedly waived the privilege by filing its conversion proposal. In the context of an action for collection of attorney fees, where the former client had counterclaimed for malpractice and the attorney impleaded other attorneys who had represented the client in the matter, the Washington State Supreme Court adopted the three-pronged test for implied waiver of privilege set out in *Hearn v. Rhay*, 68 F.R.D. 574, 581 (E.D. Wash. 1975). *Pappas v. Holloway*, 114 Wn.2d 198, 208. Under the *Hearn* test, privilege is deemed waived where (1) assertion of the privilege resulted from some affirmative act, such as filing suit, by the asserting party; (2) through such affirmative act the asserting party put the protected information at issue by making it relevant to the case; and (3) application of the privilege would deny the opposing party access to vital information. Though no reported Washington decision appears to be on point, *Southern California Gas Co. v. Public Utilities Commission*, 784 P.2d 1373 (California Supreme Court, 1979) applied the *Hearn* test to a regulatory proceeding.

In the present case, OIC Staff asserts that *Hearn* and *Southern California Gas* should be applied and that: (1) Premera's filing of its conversion proposal was an affirmative act by Premera for its own benefit; (2) Premera has placed privileged information at issue; and (3) Failing to disclose such information would threaten the integrity of this proceeding because in the absence of information concerning statutory factors permitting the Commissioner to disapprove conversion, approval would be required. RCW 48.31B.015(4)(a); 48.31C.030(5)(a).

In *Southern Gas, supra*, 784 P.2d at 1379, the court held that where the substance of protected communications between a utility and its attorneys was not affirmatively placed at issue by the utility, the privilege was not impliedly waived. In the present case, Premera's Form A filing did not place its attorneys' advice at issue. RCW Chapters 48.31B and 48.31C do not compel waiver of privilege as a consequence of an insurer's Form A filing. To hold that the clear statutory attorney-client privilege is waived as the unstated consequence of filings under these Chapters would be unwarranted.

*Application of attorney-client privilege.*

Attorney-client communications, whether related to litigation or to planning, are presumed to be for the purpose of rendering legal advice. *United States v. Chen*, 99 F.3d 1495, 1501-02 (9<sup>th</sup> Cir. 1996). However, neither business meetings attended by attorneys nor business documents sent to corporate officers and employees, as well as to corporate attorneys, are automatically privileged. *Simon v. G.D. Searle & Co.*, 816 F.2d 397, 403-04 (8<sup>th</sup> Cir. 1987), citing *First Wis. Mortgage Trust v. First Wis. Corp.*, 86 F.R.D. 160, 174 (E.D. Wis. 1980), *et al.* The fact that a client chooses to channel business advisor functions through an attorney, rather than to perform such work with non-legal personnel,

does not support a claim of privilege. *Burton v. R.J. Reynolds Tobacco Co., Inc.*, 170 F.R.D. 481, 485 (D.Kan. 1997); on reconsideration, 175 F.R.D. 321 (D.Kan. 1997). The fact that documents prepared for a business purpose are of potential use in pending litigation does not convert these documents into confidential attorney-client communications or attorney work product. *Hardy v. New York News, Inc.*, 114 F.R.D. 633, 646 (S.D.N.Y. 1987).

The mere fact that business considerations are weighed in the rendering of legal advice does not, however, vitiate the attorney-client privilege. *Coleman v. American Broadcasting Co.*, 106 F.R.D. 201, 206 (D.D.C. 1985). “Legal advice concerning commercial transactions is often intimately intertwined with and difficult to distinguish from business advice.” *Sedco International v. Cory*, 683 F.2d 1201, 1205 (8<sup>th</sup> Cir. 1982).

Where the ultimate decision of a corporate committee could be characterized as a business decision, but the committee reached that decision only after examining its legal implications, committee minutes were held to be privileged because disclosure would reveal legal advice rendered. *In re Ford Motor Co.*, 110 F.3d 954, 966 (3d Cir. 1997). Even though legal advice rendered by an attorney to a corporate board of directors may affect the corporation’s business success or failure as an ongoing entity, this possibility does not convert privileged legal advice into discoverable business advice. *Great Plains Mutual Insurance Co. v. Mutual Reinsurance Bureau*, 150 F.R.D. 193, 197 (D.Kan. 1993).

Communications with third parties with expertise necessary for the representation of a client’s legal interests are privileged. *State v. Jones*, 99 Wn.2d 735, 749; *State v. Aquino-Cervantes*, 88 Wn. App. 699, 707-709. The privilege applies equally to

employees of a corporate client and to independent contractors, such as accountants or financial advisers. *In re Bieter Co.*, 16 F.3d 929, 937 (8<sup>th</sup> Cir. 1994).

The privilege log documents include communications concerning tax, investment banking, and public relations professionals. Premera asserts that it retained such professionals as consultants to assist its attorneys in understanding the legal implications of conversion, including potential tax and accounting ramifications.

Communications related to tax or investment banking necessary to permit attorneys to render appropriate legal advice are privileged. See, *State v. Aquino-Cervantes*, *supra*. Where a public relations agency possesses authority to make public relations decisions on behalf of its client and the legal ramifications of such decisions are material factors in the development of the communications, the agency's communications with counsel or the corporation that were made for the purpose of facilitating the rendition of legal services are also privileged. *In re Copper Market Antitrust Litigation*, 200 F.R.D. 213, 219 (S.D.N.Y. 2001).

*Work product protection.* The “work product” doctrine, set forth in *Hickman v. Taylor*, 320 U.S. 495, 509-14 (1947), protects the work of an attorney performed in connection with pending or anticipated litigation. CR 26(b)(4) bars discovery of documents “prepared in anticipation of litigation or for trial” unless the party seeking production can demonstrate “substantial need of the materials in the preparation of his case and . . . [an inability] without undue hardship to obtain the substantial equivalent of the materials by other means.”

Work product protection applies in the present administrative proceeding (see discussion of RCW 34.05.452(1), *supra*). Even assuming *arguendo* that work product

protection does not apply because this proceeding is not “litigation,” the proceeding has already lead to two superior court cases, and Premera has reasonably anticipated that litigation would arise from the administrative proceeding. *See, Martin v. Monfort, Inc.*, 150 F.R.D. 172, 173 (D.Colo. 1993) (investigation by a federal agency provides reasonable grounds for anticipating litigation, sufficient to trigger application of the work product doctrine).

Work product protection extends to work product created in anticipation of litigation by agents working for the party or counsel. *Linstrom v. Ladenburg*, 110 Wn. App. 133, 143, n. 11. However, where a document would have been created in the ordinary course of business even if litigation was neither pending nor anticipated, work product protection does not apply. *Escalante v. Sentry Ins. Co.*, 49 Wn.App. 375, 395; *Griffith v. Davis*, 161 F.R.D. 687 (C.D.Cal. 1995); *In re Air Crash at Sioux City, Iowa* on July 19, 1989, 133 F.R.D. 515, 522-23 (N.D.Ill. 1990).

OIC Staff asserts that, whether or not Premera anticipated an administrative proceeding or lawsuit in the present case, Premera’s management would have analyzed any strategic issue in the same manner as it analyzed conversion. Management would have appointed a steering committee and other committees to evaluate the issue, retained consultants, and submitted a recommendation to its board of directors, all of which it did in its analysis of conversion. Because the documents at issue would have been created absent pending or anticipated litigation, work product protection pursuant to CR 26(b)(4) does not apply. Even assuming work product protection would otherwise exist, OIC Staff asserts that it has substantial need of the documents, which are within Premera’s

exclusive control, and that, under *Heidebrink v. Moriwaki*, 104 Wn.2d 392, 396, such need justifies compelled production.

The appropriate inquiry under CR 26(b)(4) is not, however, whether Premera's analysis of potential conversion followed its customary business decision-making processes, but whether the documents at issue were created in anticipation of litigation. "[E]xcept where a document would have been generated in the normal course of business even if no litigation was anticipated, the work product doctrine can reach documents prepared 'because of litigation' even if they were prepared in connection with a business transaction or also served a business purpose." *United States v. Chevron Texaco Corp.*, 241 F.Supp.2d 1065, 1082 (N.D.Cal., 2002).

To the extent that Premera asserts a blanket claim of work product protection as to the privilege log documents, based on its anticipation of the present administrative proceeding and related litigation, such claim is denied. Premera, in general, created documents related to conversion in the ordinary course of business. Though the present conversion proceeding and ancillary litigation were likely when many of the documents were created, whether a particular document was created "in anticipation of litigation" must be evaluated with reference to a claim of work product protection focused on that document.

If work product protection applies, the applicable standard for "substantial need" justifying disclosure under CR 26(b)(4) is set out in *Heidebrink*, at 401: The requesting party must show the importance of the information requested to the preparation of its case and the difficulty it will face in obtaining substantially equivalent information from other sources if production is denied.



For the most part, where the following rulings permit Premera to continue to withhold privilege log documents, such rulings are not based solely upon findings of work product protection. OIC Staff has not demonstrated substantial need justifying disclosure as to any document which Premera is permitted to withhold based on work product protection. Such documents, if any, were generated during the active litigation of this conversion proceeding and do not reveal Premera's decision-making process or other potentially significant matters. OIC Staff and the State's Consultants can obtain substantially equivalent information as to the substantive issues in this proceeding from other sources.

Even if OIC Staff were to demonstrate substantial need under the *Heidebrink*, standard, the "mental impressions of the attorney and other representatives of a party are absolutely protected, unless such impressions are directly at issue." CR 26(b)(4); *Linstrom, supra*, at 611. The mental impressions of Premera's attorneys are not directly at issue in any claims in this proceeding, and the statutory criteria for the Commissioner's review of Premera's proposed conversion do not include the evaluation of counsel's subjective thought processes. *See*, RCW 48.31C.030(2).

*Rulings re specific privilege log documents:*

The following rulings apply the principles discussed above. Italicized document numbers, dates, subject matter descriptions, and authors are drawn from the "Premera Privilege Log" (which, according to Premera's letter to me dated June 30, 2003, Premera first produced to the States' Consultants on March 14, 2003, and provided in its current version to OIC, the ADI and the States' Consultants on June 24, 2003); Second Supplemental "Premera Privilege Log" (which, according to Premera's June 30 letter,

was produced to OIC, the ADI and the States' Consultants on June 27, 2003); and Third Supplemental "Premera Privilege Log," (which OIC Staff states it received at 5:45 PM August 7, 2003).

Descriptions of the purpose and substance of the privilege log documents are based on Mr. Domeika's declarations and on review of the documents themselves. Such descriptions are limited, to protect the documents from disclosure, consistent with presenting a meaningful rationale for the rulings. The rulings encompass both claims of attorney-client privilege and work product protection.

Consistent with the Commissioner's Tenth Order, Paragraph 4, Premera shall have three business days following receipt of this Decision (a) to deliver to the OIC Staff those privilege log documents that it is hereby ordered to produce, and/or (b) to identify any individual privilege log documents as to which it disputes the *in camera* determinations reflected in this Decision.

Consistent with the Commissioner's "Eleventh Order: Case Schedule," page 1, the Case Schedule "Trigger Date" will occur upon Premera's production of those documents determined by this Decision not to be privileged. Consistent with the Commissioner's Eleventh Order, page 2, once the Trigger Date has been established, the parties will be notified of specific dates for each event, based on the Case Schedule at pages 2-3 of the Eleventh Order.

*PPRE 1-12. 03/06/03 Memorandum marked Attorney-Client Privileged communicating information requested by counsel re: conversion costs: Larry Zommick-Premera Blue Cross ("Premera").*

This document, related to taxation of conversion costs, was prepared at the request of Premera's Senior Vice President and General Counsel, Mr. Domeika, for purposes of providing legal advice related to taxation of reorganization costs. IRS litigation concerning such issues was likely.

Premera's claim of privilege is sustained. This internal Premera document appears to have been created for purposes of informing legal advice and in the reasonable anticipation of tax-related litigation.

*PPRE 13-20. 03/04/03 Memorandum marked Attorney-Client Privileged containing legal advice of tax counsel re: Washington State tax issues: Gerald Swanson—Ernst & Young-Consultant.*

This document (marked "Confidential—Tax Advisor-Client Privilege") was prepared at Mr. Domeika's request to assess litigation risks related to Washington State taxes.

Premera's claim of privilege is sustained. Mr. Swanson was a tax advisor who was in this case necessary to permit Premera's attorneys to render appropriate legal advice.

*PPRE 21-38. 02/12/03 Presentation marked Attorney-Client Privileged containing legal advice with attached transmittal form re: conversion update/litigation: Peter Buck-Premera Blue Cross Legal ("Premera Legal")-Attorney.*

This document, apart from the document delivery form, PPRE 22, consists of presentation materials prepared by Mr. Domeika and Yori Milo (Premera's Executive Vice President, Chief Legal and Public Policy Officer) for a meeting of the Board of

Directors on February 12, 2003. PPRE 23-31 (slides 1-9) identify topics and issues that counsel addressed at the Board meeting.

Premera's claim of privilege is sustained as to PPRE 23-31, which appear to reflect legal advice rendered. Premera shall produce the balance of this document. Mr. Domeika's and Mr. Milo's responsibilities extended well beyond rendering legal advice to participation as business advisors and decision-makers at the highest level. (Mr. Domeika's and Mr. Milo's broad authority is reflected in their titles, in the privilege log documents, and in non-privileged documents produced by Premera.) The presentation materials as to which production is ordered include, e.g., PPRE 33, which references "Guiding Principles," including "Support of mission, vision and strategy." Such materials reflect a dominant business purpose, not their rendering of legal advice intertwined with business advice, which would be protected.

*PPRE 39-61. 02/21/02 Email thread communicating information requested by counsel in anticipation of litigation, with attached summary re: Conversion and Acquisition Study: Goldman Sachs-Consultant.*

This document was prepared by LeBouf, Lamb for the North Carolina Department of Insurance ("DOI") summarizing conversion conditions and restrictions imposed by insurance regulators in other jurisdictions.

Premera shall produce this document. Mr. Domeika represents that this summary was prepared and sent to him in his role as legal advisor to Premera, in anticipation of upcoming hearings on Premera's conversion proposal and follow-on appeals. The summary was not, however, prepared for Mr. Domeika by Premera's investment banking consultant Goldman Sachs, but instead by a third party (LeBouf, Lamb) for a fourth party

(North Carolina DOI). Nothing in the document suggests that it was prepared or provided to inform Mr. Domeika's rendering of legal advice.

*PPRE 74. 12/06/02 Email thread containing and requesting legal advice re: Premera conversion: Andrew Gladin-Sullivan & Cromwell-Outside Counsel.*

This email thread consists of communications of Premera's counsel and Jay Rose of Goldman Sachs related to conversion hearings issues in other jurisdictions. Mr. Domeika represents that such communications were for the purpose of helping him to prepare for hearings and to advise Premera in matters related to the conversion.

Premera's claim of privilege is sustained. These emails appear to have been created for purposes of informing legal advice by Premera's attorneys. Premera's investment banking advisors were reasonably necessary to permit the attorneys to render such advice.

*PPRE 75. 11/29/02 Email thread containing legal advice re: analysis of scope of consultants' engagement by States: Yori Milo-Premera Legal-Attorney.*

This email thread consists of a communication from Dino Fusco of Goldman Sachs discussed by Premera's counsel, and reflects consideration of legal issues related to the conversion proceeding.

Premera's claim of privilege is sustained. These documents appear to have been created for the purpose of rendering legal advice.

*PPRE 76-105 11/13/02 Email containing legal advice with attached matrix marked Attorney-Client Privileged re: Premera articles of incorporation: Peter Buck-Premera Legal-Attorney.*

These comparative charts were prepared for Mr. Domeika by Mr. Buck, Premera's Assistant General Counsel, and by outside counsel, Sullivan & Cromwell, and reflect consideration of legal issues, anticipating areas of potential legal challenge.

Premera's claim of privilege is sustained. These analytical documents appear to have been created for the purpose of rendering legal advice and/or in anticipation of litigation.

*PPRE 107. 10/28/02 Email communicating information requested by counsel in anticipation of litigation re: information requests: Dino Fusco-Goldman Sachs-Consultant.*

This email is addressed to John Cake at Premera. According to Mr. Domeika, Mr. Cake is a member of Premera's strategic planning staff who worked with Mr. Buck and him in responding to the States' Consultants data requests. The email, on which Mr. Domeika is copied, reflects evaluation of such requests.

Premera's claim of privilege is sustained. The document appears to relate to legal issues involved in prosecuting Premera's request for conversion.

*PPRE 108. 10/24/02 Email communicating information requested by counsel in anticipation of litigation re: information requests: Dino Fusco-Goldman Sachs-Consultant.*

This email is included in the thread PPRE 75.

Premera's claim of privilege is sustained.

*PPRE 122-123. 02-21-03 Email thread containing and requesting legal advice re: engagement letter: Seanann Card-Preston Gates & Ellis ("PG &E")-Outside counsel.*

This email thread relates to outside counsel's engagement of Goldman Sachs.

Premiera's claim of privilege is sustained. Communications of outside counsel with corporate counsel related to the engagement of investment banking advisors relate to the rendering of legal advice and are privileged.

*PPRE 124. 08/26/02 Email thread discussing advice of counsel (Domeika) and containing legal advice re: hearing presentation: Dino Fusco-Goldman Sachs-Consultant.*

This email thread reflects communications among Mr. Domeika, Goldman Sachs and Gogerty Stark, Premiera's external public affairs consulting firm, related to public forums to be conducted by the Commissioner.

Premiera shall produce this document. As discussed above, where the legal ramifications of public presentations are material to a public relations agency's communications with counsel, such communications may be privileged. However, this document does not reflect the consideration of such legal ramifications. Instead the emails discuss Premiera's "Presentation Topics" for the public forums (including, e.g., "Introduce Premiera as strong community ties," which is unrelated to legal issues).

*PPRE 127-130. 08/26/02 Email requesting legal advice with attached draft outline re: hearing presentation: Dino Fusco-Goldman Sachs-Consultant.*

This document consists of an email from Goldman Sachs to John Cake and Mr. Domeika and a draft outline for Premiera's public forum presentation.

Premiera shall produce this document. The document does not reflect legal advice, nor is there evidence that the document was necessary to the rendering of legal advice. Instead, the document appears to have been created by Goldman Sachs for the

business purpose of persuasively presenting Premera's case for conversion at the Commissioner's public forum.

*PPRE 131-133. 08/12/02 Email marked Attorney-Client Privileged re: nonprofit conversion to stock company: Andrew Gladin-Sullivan & Cromwell-Outside Counsel.*

This document is an email from New York outside counsel to Seattle outside counsel and Mr. Domeika related to legal advice concerning tax issues.

Premera's claim of privilege is sustained. This email represents communication by counsel for the purpose of rendering legal advice.

*PPRE 134-136. 08/08/02 Email thread marked Attorney-Client Privileged discussing advice of tax counsel (Tracy) and containing legal advice re: conversion transaction: Larry Zommick-Premera.*

This document (captioned "Tax Advisor-Client Communication; Privileged and Confidential") was directed to Larry Zommick, Premera's Tax Manager, from Ken Tracy, a tax accountant with Ernst & Young (copy to Mr. Domeika).

Premera shall produce this document. The communication was between an outside tax accountant and Premera's tax manager and does not appear to be responsive to the request of counsel for tax advice to assist counsel in rendering legal advice. Instead, the communication appears dominantly to be a straightforward tax professional-to-tax professional analysis for business purposes. Providing a copy to counsel or referring to the future need to consider and react to "the legal steps of the transaction" (PPRE 134) does not transform this document into a privileged communication. (Notwithstanding the fact that Mr. Zommick and Mr. Tracy may each, separate from this communication, have assisted Mr. Domeika in his role as Premera's attorney.)



*PPRE 137-139. 08/02/02 Email thread marked Attorney-Client Privileged containing advice of tax counsel re: tax analysis (with FYI from Zommick to Domeika): Larry Zommick-Premera.*

This document (captioned “Tax Advisor-Client Communication; Privileged and Confidential”) reflects communications from Mr. Tracy of Ernst & Young to other Ernst & Young tax professionals and to Premera’s external audit partner (also of Ernst & Young), which was forwarded to Mr. Zommick, who in turn forwarded it to Mr. Domeika. The underlying email analyzes tax issues related to conversion.

Premera shall produce this document. As with PPRE 134-136, this document appears to be a straightforward professional analysis of the tax implications of conversion for business purposes, though it may also have provided some ancillary benefit to Mr. Domeika in his rendering of legal advice.

*PPRE 140-170. 05/14/02 Presentation marked Attorney-Client Privileged containing legal advice re: conversion process: John Domeika-Premera Legal-Attorney.*

This document is a set of slides that Mr. Milo and Mr. Domeika prepared and presented at the January 24, 2002 Board meeting.

Premera’s claim of privilege is sustained. The slides’ dominant thrust relates to legal issues associated with the structure of the proposed conversion and associated issues. This document reflects the rendering of legal advice by Premera’s counsel.

*PPRE 171-275. 05/08/02 Steering Committee meeting materials marked Attorney-Client Privileged containing legal advice re: May 14 Board meeting/conversion communication plans: John Domeika-Premera Legal-Attorney.*

These documents are Steering Committee meeting presentation materials dated May 8, 2002. The Steering Committee's membership consists of members of Premera's senior management team--Chief Executive Officer, Chief Financial Officer, Chief Legal & Public Policy Officer, Executive Vice President of Health Care Services & Strategic Development, and General Counsel. The Steering Committee was responsible for reviewing various matters with respect to the proposed conversion (including legal matters, which were brought to the Steering Committee's attention by Mr. Domeika).

The documents at issue include an agenda for the May 8 Steering Committee meeting and an identification of matters to be presented to the Board at its May 14 meeting. Certain of the presentation materials were prepared by Mr. Domeika, by employees under his direction, or by outside counsel. The other materials were prepared by another Premera employee, but provided to Mr. Milo and Mr. Domeika for "legal review and advice," to assure that all matters were "properly presented before the Board for purposes of fulfilling their duties in the consideration of the proposed reorganization."

Premera's claim of privilege is sustained as to PPRE 201-266. These documents appear to reflect the consideration of legal issues and the presentation of such issues to the Steering Committee and Board. Premera shall produce the balance of the documents, which include meeting agendas, discussion of the business case for conversion, time lines and "Guiding Principles." Such documents do not appear to be based on legal analysis or to relate to the rendering of legal advice. The fact that presentation materials are vetted by attorneys does not convert such materials into privileged documents where, as here, the materials have a dominantly business purpose.

*PPRE 276-302. 05/06/02 Steering Committee meeting materials containing legal advice re: board duties and standards: John Domeika-Premera Legal-Attorney.*

These documents are meeting materials related to the May 6, 2002 Steering Committee meeting, which was held to prepare for the May 14, 2002 Board meeting. The documents relate to the legal duties of Board members.

Premera's claim of privilege is sustained. The materials reflect the rendering of legal advice to the Steering Committee and Board.

*PPRE 303-407. 04/24/02 Steering Committee meeting materials marked Attorney-Client Privileged containing legal advice re: transaction terms and priorities: John Domeika-Premera Legal-Attorney.*

These documents are Steering Committee meeting materials prepared by outside counsel and Mr. Domeika and presented to the Board at its May 14, 2002 meeting.

Premera's claim of privilege is sustained. The materials reflect the proposed legal structure, transaction steps for reorganization, and term sheets prepared by counsel for purposes of rendering legal advice to management and the Board with respect to reorganization.

*PPRE 408-435. 03/20/02 Steering Committee meeting materials marked Attorney-Client Privileged containing legal advice re: creating Steering Committee plan: and conversion timeline: John Cake-Premera.*

These documents were presented to the Steering Committee at its March 20, 2002 meeting. The documents include notes made by Yori Milo to a draft document and an inventory of questions raised by Board members in connection with presentations related to the proposed conversion.

Premera's claims of privilege are sustained as to PPRE 411 and 412, which reflect counsel's notes. Premera shall produce the balance of these documents. The "Board Questions" include limited references to matters likely to implicate legal issues. The Board Questions did not, however, request legal advice, nor is any follow-up legal advice touching on such questions reflected in these documents.

The "Steering Committee Plan," PPRE 424-431, includes only occasional reference to legal issues and calendars these without discussion. (The Plan lists Mr. Domeika as the "responsible team lead" for the "business case description overview." This is one of the many documents that suggests that Mr. Domeika served Premera as a key business policy advisor and decision-maker, as well as an attorney providing legal advice.)

*PPRE 436-475. 03/07/02 Executive Management Group offsite meeting packet marked Attorney-Client Privileged containing legal advice re: conversion overview: John Domeika-Premera Legal-Attorney.*

These documents are presentation materials for a meeting of Premera's Senior Management that was held on March 7, 2002. The materials summarize the results of consumer focus group research conducted by Premera's public relations advisor, Gogerty Stark. Mr. Domeika states that Gogerty Stark was engaged to assist Premera in identifying public issues and concerns regarding conversion and, "in part," to assist counsel in preparing for conversion hearings.

Premera shall produce these documents. Although a public relations agency's communications with counsel or a corporation made for the purpose of facilitating the rendition of legal services are privileged, here the connection between market research

and legal representation is attenuated at best. These materials appear to focus on business and public relations issues surrounding conversion, not to further counsel's rendering of legal services or to assist counsel in preparing for conversion hearings. (E.g., PPRE 457: "If there is going to be change, people want to see a personal benefit.")

*PPRE 476-537. 01/23/02 Steering Committee meeting materials marked Attorney-Client Privileged containing legal advice re: legal structure and charitable trust issues: John Domeika-Premera Legal-Attorney.*

These documents, reviewed at the January 23, 2002 Steering Committee meeting, include presentation materials and draft presentation materials for meetings of the Board on December 12, 2001 and January 24, 2002 and the Governance Committee of the Board on January 23, 2002, as well as counsel's edits to draft minutes of the Board.

Premera's claim of privilege is sustained. All documents relate to the analyses of legal issues by counsel and to legal advice rendered to the Steering Committee.

*PPRE 538-569. 01/15/02 Steering Committee meeting materials marked Attorney-Client Privileged containing legal advice re: legal structure and charitable trust issues: John Domeika-Premera Legal-Attorney.*

This document is a fax from Mr. Domeika to Andrew Gladin of outside counsel Sullivan & Cromwell addressing the legal structure of the proposed conversion.

Premera's claim of privilege is sustained. This document appears to relate to the analysis of legal issues by counsel.

*PPRE 570-579. 01/09/02 Steering Committee meeting materials marked Attorney-Client Privileged containing legal advice re: trust and foundation issues: John*

*Domeika-Premera Legal-Attorney; William Torchiana and Andrew Gladin-Sullivan & Cromwell-Outside Counsel; PG&E.*

These documents are materials distributed at a Steering Committee meeting held of January 9, 2002, including the agenda and term sheet summaries presented by counsel for purposes of providing legal advice related to the structure of a new publicly traded Premera.

Premera's claim of privilege is sustained as to PPRE 572-579. These documents appear to relate primarily to legal analysis and presentations by counsel. These documents do touch on matters that include business considerations, but the fact that such considerations are weighed in the rendering of legal advice does not vitiate the privilege.

Premera shall produce PPRE 570-571, the cover sheet and January 9, 2002 Steering Committee Agenda, which do not relate to the rendering of legal advice.

*PPRE 580-628. 12/05/01 Steering Committee meeting packet marked Attorney-Client Privileged containing legal advice re: overview of transaction structure/steps: Kari Glover-PG & E; Yori Milo-Premera Legal-Attorney.*

These documents comprise a packet of materials distributed to the Steering Committee members at a meeting held December 5, 2001 to review a presentation to be made by Premera's counsel to the Board at its December 12, 2001 meeting.

Premera's claim of privilege is sustained. Though the documents touch on business considerations, the analysis appears to relate primarily to corporate structure and governance and other legal issues to be presented by counsel.

*PPRE 629-641. 11/18/01 Memorandum marked Attorney-Client Privileged containing legal advice re: federal tax status of nonprofit corporation: Lance Behnke and Lisa Johnsen-PG&E.*

This document is a memorandum prepared by outside counsel at Mr. Domeika's request containing legal advice related to tax issues, with Mr. Domeika's handwritten comments on the margin.

Premera's claim of privilege is sustained. This document contains legal analysis prepared by counsel.

*PPRE 642-680. 10/30/01 Steering Committee meeting packet marked Attorney-Client Privileged containing legal advice re: transaction structure, charitable trust issues and capital planning: John Domeika-Premera Legal-Attorney.*

This document is a packet of materials presented at a Steering Committee meeting held October 31, 2001. The materials include an agenda and a status report/timeline, as well as corporate structure analysis.

Premera's claims of privilege are sustained as to PPRE 654-680, which appear to relate primarily to the analysis of corporate structure and governance by counsel.

Premera shall produce the remainder of these documents. The agenda and status report/timeline do not relate to the rendering of legal advice.

*PPRE 681-684. 10/16/01 Fax cover sheet marked Attorney-Client Privileged with attached agenda for meeting with Goldman Sachs re: conversion/tax issues: John Domeika-Premera Legal-Attorney.*

This document is a fax cover sheet and agenda prepared by Mr. Domeika for a meeting between a Goldman Sachs representative and counsel.

Premera's claim of privilege is sustained. Goldman Sachs' participation in the scheduled meeting appears to have been necessary to assist counsel in rendering legal advice to management and the Board related to the structuring of the reorganized Premera.

*PPRE 696-724. 04/03/02 Steering Committee meeting materials marked Attorney-Client Privileged containing legal advice re: transaction: John Domeika-Premera Legal-Attorney.*

The documents relate to the Steering Committee meeting held April 3, 2002. The only substantive document is a matrix prepared by internal and external counsel providing legal analysis with regard to alternative entity structures.

Premera's claim of privilege is sustained. This document reflects the rendering of legal advice by inside and outside counsel.

*PPRE 725. 00/00/00 Matrix marked Attorney-Client Privileged/Work Product containing legal advice re: nonprofit corporation/charitable trust: Kari Glover, Tamara Watts and Lisa Johnsen-PG&E.*

This document contains legal analysis prepared by outside counsel at Mr. Domeika's request.

Premera's claim of privilege is sustained.

*PPRE 726-728. 00/00/00 Matrix marked Attorney-Client Privileged/Work Product containing legal advice re: relationship of tax-exempt organization to for-profit entity: Kari Glover and Tamara Watts-PG&E.*

This document contains legal analysis prepared by outside counsel at Mr. Domeika's request.



Premera's claim of privilege is sustained.

*PPRE 729-732 00/00/00 Matrix marked Attorney-Client Privileged/Work Product containing legal advice re: relationship of tax-exempt organization to for-profit entity: Kari Glover and Tamara Watts-PG&E.*

This document contains legal analysis prepared by outside counsel at Mr. Domeika's request.

Premera's claim of privilege is sustained.

*PPRE 733-743. 02/20/02 Draft memo marked Attorney-Client Privileged re: charitable trusts/nonprofit corporations: Kari Glover, Heather Utter and Tamara Watts-PG&E.*

This document contains legal analysis prepared by outside counsel at Mr. Domeika's request.

Premera's claim of privilege is sustained.

*PPRE 744. 00/00/00 Matrix marked Attorney-Client Privileged/Work Product containing legal advice re: 501(c)(3) organization: Kari Glover, Lisa Johnsen and Tamara Watts- PG&E.*

This document contains legal analysis prepared by outside counsel at Mr. Domeika's request.

Premera's claim of privilege is sustained.

*PPRE 745-751. 10/11/01 Draft matrix marked Attorney-Client Privilege/Work Product containing legal advice re: principal corporate documents: Kari Glover and Tamara Watts-PG&E.*

This document contains legal analysis prepared by outside counsel at Mr. Domeika's request.

Premera's claim of privilege is sustained.

*PPRE 752-769. 9/10/01 Memo marked Attorney-Client Privileged/Work Product containing legal advice re: charitable trusts: Kari Glover and Tamara Watts-PG&E.*

This document contains legal analysis prepared by outside counsel at Mr. Domeika's request.

Premera's claim of privilege is sustained.

*PPRE 770-784. 08/30/01 Draft memo marked Attorney-Client Privileged/Work Product containing legal advice re: charitable trusts: Kari Glover and Tamara Watts-PG&E.*

This document contains legal analysis prepared by outside counsel at Mr. Domeika's request.

Premera's claim of privilege is sustained.

*PPRE 785-787. 00/00/00 Matrix marked Attorney-Client Privileged/Work Product containing legal advice re: tax exempt organizations: Lisa Johnsen-PG&E.*

This document contains legal analysis prepared by outside counsel at Mr. Domeika's request.

Premera's claim of privilege is sustained.

*PPRE 788-796. 00/00/00 Matrix marked Attorney-Client Privileged/Work Product containing legal advice re: corporate conversions: Kris Pattison-PG&E.*

This document contains legal analysis prepared by outside counsel at Mr. Domeika's request.

Premera's claim of privilege is sustained.

*PPRE 797-801. 10/25/01 Draft matrix marked Attorney-Client Privileged/Work Product containing legal advice re: charitable trusts/nonprofit organizations: Kari Glover and Tamara Watts-PG&E.*

This document contains legal analysis prepared by outside counsel at Mr. Domeika's request.

Premera's claim of privilege is sustained.

*PPRE 802-807. 10/17/01 Summary marked Attorney-Client Privileged/Work Product containing legal advice re: license agreements: Tamara Watts-PG&E.*

This document contains legal analysis prepared by outside counsel at Mr. Domeika's request.

Premera's claim of privilege is sustained.

*PPRE 808-818. 10/29/01 Matrix marked Attorney-Client Privileged containing legal advice re: charter documents: Kris Pattison and Tamara Watts-PG&E.*

This document contains legal analysis prepared by outside counsel at Mr. Domeika's request.

Premera's claim of privilege is sustained.

*PPRE 819-829. Identical to PPRE 808-818.*

This document contains legal analysis prepared by outside counsel at Mr. Domeika's request.

Premera's claim of privilege is sustained.

*PPRE 830. 10/30/01 Memo marked Attorney-Client Privileged containing legal advice re: Premera First agreement language: Kittie Cramer-Premera-Attorney.*

This document contains legal analysis prepared for Mr. Domeika by Premera's Assistant General Counsel.

Premera's claim of privilege is sustained.

*PPRE 831-835. 08/17/01 Matrix marked Attorney-Client Privileged containing legal advice re: charitable trust: Kari Glover and Tamara Watts-PG&E.*

This document contains legal analysis prepared by outside counsel at Mr. Domeika's request.

Premera's claim of privilege is sustained.

*PPRE 836-844. 08/16/01 Matrix marked Attorney-Client Privileged containing legal advice re: charter documents: Kris Pattison and Tamara Watts-PG&E.*

This document contains legal analysis prepared by outside counsel at Mr. Domeika's request.

Premera's claim of privilege is sustained.

*PPRE 845-847. 08/22/01 Matrix marked Attorney-Client Privileged containing legal advice re: charitable trust: Kari Glover and Tamara Watts-PG&E.*

This document contains legal analysis prepared by outside counsel at Mr. Domeika's request.

Premera's claim of privilege is sustained.

*PPRE 848-858. 08/24/01 Matrix marked Attorney-Client Privileged containing legal advice re: charter documents: Kris Pattison and Tamara Watts-PG&E.*

This document contains legal analysis prepared by outside counsel at Mr. Domeika's request.

Premera's claim of privilege is sustained.

*PPRE 859-869. 08/30/01 Matrix marked Attorney-Client Privileged containing legal advice re: charter documents: Kris Pattison and Tamara Watts-PG&E.*

This document contains legal analysis prepared by outside counsel at Mr. Domeika's request.

Premera's claim of privilege is sustained.

*PPRE 870-878. 08/21/01 Matrix marked Attorney-Client Privileged containing legal advice re: charter documents: Kris Pattison and Tamara Watts-PG&E.*

This document contains legal analysis prepared by outside counsel at Mr. Domeika's request.

Premera's claim of privilege is sustained.

*PPRE 879-882. 10/25/01 Term sheet marked Attorney-Client Privileged/Work Product, with attached matrices, all containing legal advice re: articles and bylaws: Tamara Watts-PG&E.*

This document contains legal analysis prepared by outside counsel at Mr. Domeika's request.

Premera's claim of privilege is sustained.

*PPRE 883-886. 01/13/99 Memo marked Attorney-Client Privileged communicating information requested by counsel re: tax issues: Larry Zommick-Premera.*

This document is a memorandum prepared by Premera's Tax Manager at the request of Mr. Domeika to assist him in providing legal analysis related to tax issues.

Premera's claim of privilege is sustained. Mr. Zommick had expertise necessary to Mr. Domeika's representation of Premera's legal interests.

*PPRE 887-903. 09/04/01 Draft matrix marked Attorney-Client Privileged/Work Product containing legal advice re: conversion transactions: Andrew Gladin-Sullivan & Cromwell-Outside Counsel.*

This document contains legal analysis prepared by outside counsel at Mr. Domeika's request.

Premera's claim of privilege is sustained.

*PPRE 904-912. 09/19/01 Draft matrix containing legal advice re: litigation summary: Andrew Gladin-Sullivan & Cromwell-Outside Counsel.*

This document contains legal analysis prepared by outside counsel at Mr. Domeika's request.

Premera's claim of privilege is sustained.

*PPRE 913-915. 05/15/00 Matrix marked Attorney-Client Privileged containing legal advice re: charter documents: John Domeika-Premera Legal-Attorney; Kitt Cramer-Premera-Attorney.*

This document contains legal analysis by Premera's internal counsel prepared at Mr. Domeika's request.

Premera's claim of privilege is sustained.

*PPRE 916-918. 05/15/00 Matrix marked Attorney-Client Privileged containing legal advice re: charter documents: John Domeika-Premera Legal-Attorney; Kitt Cramer-Premera-Attorney.*

This document contains legal analysis by Premera's internal counsel prepared at Mr. Domeika's request.

Premera's claim of privilege is sustained.

*PPRE 919-932. 10/18/02 Portion of meeting minutes marked Attorney-Client Privileged summarizing communication with counsel re: stock programs. Produced as 0025531: Yori Milo-Premera Legal-Attorney.*

These documents include minutes of a special meeting of the Premera Board held on October 18, 2002 and a memorandum dated October 15, 2002 from Premera's CEO to the Premera and Premera Blue Cross Governance Committees, attaching a slide presentation prepared by William M. Mercer, Premera's compensation consultants, related to potential stock programs following conversion. Mr. Domeika represents that these documents have already been produced, except for the redaction of two paragraphs of the minutes related to legal advice.

Premera's claim of privilege is sustained. The two redacted paragraphs (at PPRE 921) appear to relate to legal advice rendered.

*PPRE 933-946. 10/18/02 Portion of meeting minutes marked Attorney-Client Privileged summarizing communication with counsel re: stock programs. Produced as 0025545: Yori Milo-Premera Legal-Attorney.*

These documents include minutes of a special meeting of the Premera Blue Cross Board held on October 18, 2002 and a memorandum dated October 15, 2002 from Premera's CEO to the Premera and Premera Blue Cross Governance Committees, attaching a slide presentation prepared by William M. Mercer, Premera's compensation consultants, related to potential stock programs following conversion. Mr. Domeika represents that these documents have already been produced, except for the redaction of two paragraphs in the minutes related to legal advice.

Premera's claim of privilege is sustained. The two redacted paragraphs (at PPRE 935) appear to relate to legal advice rendered.

*PPRE 947-949. 10/06/02-10/08/02 Portion of meeting minutes marked Attorney-Client Privileged discussing advice of counsel (Domeika, Milo, Torchiana) re: board responsibilities/personnel matter/government affairs. Produced as 0025561: Yori Milo-Premera Legal-Attorney.*

These documents are minutes of the Premera Blue Cross Board retreat held October 6-8, 2002. Mr. Domeika represents that the minutes have already been produced in response to data requests WA 06, B102, and B113, except for the redaction of paragraphs 3 and 4 at page 2 of the minutes.

Premera's claim of privilege is sustained as to page 2, paragraph 3 of the minutes, beginning, "Upon continuation. . ." (PPRE 948), which concern presentation by counsel related to legal issues. Premera shall produce the balance of these documents without further redaction. Paragraph 4 of page 2 relates to a personnel matter, to the Medicare Part A program and to bylaws amendments, and does not reflect legal advice rendered.

*PPRE 950-952. 10/06/02-10/08/02 Portion of meeting minutes marked Attorney-Client Privileged discussing advice of counsel (Domeika, Milo, Torchiana) re: board responsibilities/personnel matter/government affairs. Produced as 0025564: Yori Milo-Premera Legal-Attorney.*

These documents are minutes of the Premera Board retreat held October 6-8, 2002. The minutes are identical to the PPRE 947-949, except for the caption "Premera" in place of "Premera Blue Cross."



Premera's claim of privilege is sustained as to page 2, paragraph 3 of the minutes (PPRE 951). Premera shall produce the balance of the documents without further redaction.

*PPRE 953-955. 10/01/02 Portion of meeting minutes marked Attorney-Client Privileged discussing advice of counsel (Jones) re: Human Resources/potential litigation. Produced as 0025764: Yori Milo-Premera Legal-Attorney.*

This document is the minutes for the special meeting of the Premera Blue Cross Governance Committee held October 1, 2002. Mr. Domeika represents that these minutes have already been produced in response to data requests WA 06, B102 , B103 and B113, except for the redaction of four paragraphs (at PPRE 954) relating to personnel matters with respect to two employees of Premera, including a presentation by outside legal counsel.

Premera's claim of privilege is sustained. The redacted portion of the minutes reflects the rendering of legal advice related to personnel matters, with follow up discussion and decisions by non-attorneys. The committee reached its business decisions related to personnel matters only after being advised of and examining the legal implications of such decisions.

*PPRE 956-958. 10/01/02 Portion of meeting minutes marked Attorney-Client Privileged discussing advice of counsel (Jones) re: Human Resources/potential litigation. Produced as 0025673: Yori Milo-Premera Legal-Attorney.*

This document is the minutes of the special meeting of the Premera Governance Committee held October 1, 2002. These minutes are identical to PPRE 953-955, except for the substitution of "Premera" for "Premera Blue Cross" in the caption.

Premera's claim of privilege is sustained. The redacted portion of the minutes reflects the rendering of legal advice related to personnel matters, with follow up discussion and decisions by non-attorneys. The committee reached its business decisions related to personnel matters only after being advised of and examining the legal implications of such decisions.

*PPRE 959-968. 08/14/02 Portions of meeting minutes marked Attorney-Client Privileged discussing advice of counsel (Domeika, Milo) re: conversion status/litigation/government affairs. Produced as 0025571-0025573: John Domeika and Yori Milo-Premera Legal-Attorneys.*

These documents are the minutes of the Premera Board meeting on August 14, 2002. Mr. Domeika represents that these documents have been produced in response to data requests WA 06, B102, B103 and B113, except for redactions (page 5, paragraphs 3 and 4; page 7, paragraph 6 to page 9, paragraph 6) that include presentations by counsel. Premera's claim of privilege is sustained as to most redactions, which reflect the presentations by counsel related to legal issues and discussions related to such issues.

Premera shall produce PPRE 964 (page 6) without the redaction of paragraph 1, beginning "Mr. Marquardt...." This paragraph appears to relate to financial analysis not necessary to or related to the rendering of legal advice. Premera shall also produce PPRE 967 (page 9) without the redaction of paragraphs 3, 4 and 5, which begin "The privileged report concluded..." and end "...Bylaws as presented." These paragraphs reflect presentations by Mr. Domeika concerning business issues (e.g., a name change related to a branding initiative), followed by Board action. No legal advice appears to have been rendered as to such issues.

*PPRE 969-978. 08/14/02 Portion of meeting minutes marked Attorney-Client Privileged discussing advice of counsel (Domeika, Milo) re: conversion status. Produced as 0025581-0025582: John Domeika-Premera Legal-Attorney.*

These documents are the minutes of the Premera Blue Cross Board meeting on August 14, 2002. These documents are identical to PPRE 959-968, except for the caption "Premera Blue Cross" in place of "Premera."

Premera's claim of privilege is sustained as to most redactions, which reflect presentations by counsel related to legal issues and discussions related to such issues.

Premera shall produce PPRE 974 (page 6) without the redaction of paragraph 1, beginning "Mr. Marquardt...." This paragraph appears to relate to financial analysis not necessary to or related to the rendering of legal advice. Premera shall also produce PPRE 977 (page 9) without the redaction of paragraphs 3, 4 and 5, which begin "The privileged report concluded..." and end "...Bylaws as presented." These paragraphs reflect presentations by Mr. Domeika concerning business issues (e.g., a name change related to a branding initiative), followed by Board action. No legal advice appears to have been rendered as to such issues.

*PPRE 979-996. 05/15/02 Portion of meeting minutes marked Attorney-Client Privileged discussing advice of counsel (Domeika, Malkin) re: litigation updates/government affairs. Produced as 0000018-0000020: Yori Milo-Premera Legal-Attorney.*

This document is the minutes of the Premera Board meeting held May 15, 2002. Mr. Domeika represents that the minutes have already been produced in response to data requests WA 06, B102, B103 and B113, except for redactions related to report by internal

and outside counsel concerning litigation and a government investigation. (PPRE 991-993, pages 13-15.)

Premera's claim of privilege is sustained. The redactions relate to presentations by counsel concerning legal issues.

*PPRE 997-1012, 02/12/02 Portions of meeting minutes marked Attorney-Client Privileged discussing advice of counsel (Domeika, Milo) re: government affairs/litigation update. Produced as 0000037-0000039; 00000041-0000042: John Domeika-Premera Legal-Attorney.*

This document is the minutes of a Premera Board meeting held February 12-13, 2002. Mr. Domeika represents that these minutes have already been produced in response to data requests WA 06, B102, B103 and B113, except for redactions at PPRE 1004-1006 (pages 8-10) related to legal issues.

Premera's claim of privilege is sustained. The redacted portions of the minutes reflect legal advice rendered or decisions taken in light of legal advice rendered.

*PPRE 1013-1018. 01/24/02 Portion of meeting minutes marked Attorney-Client Privileged discussing advice of counsel (Domeika, Milo, Torchiana) re: structure of reorganization transaction. Produced as 0018907-0018908 and as 029382-029387: John Domeika-Premera Legal-Attorney.*

This document is the minutes of the special meeting of the Premera Blue Cross Board held on January 24, 2002. Mr. Domeika represents that the minutes have been produced in response to data requests WA 06, B102, B103 and B113, except for redactions at PPRE 1016-1017 (page 4-5) related to presentations of counsel.

Premera' claim of privilege is sustained. The redacted portions of the minutes reflect legal advice rendered or decisions taken in light of legal advice rendered.

*PPRE 1019-1024. 01/24/02 Portion of meeting minutes discussing advice of counsel (Domeika, Milo, Torchiana) re: conversion transaction. Produced as 0025591: John Domeika-Premera Legal-Attorney.*

This document is the minutes of the special meeting of the Premera Board held on January 24, 2002. These minutes are identical to PPRE 1013-1018, except for the caption "Premera" in place of "Premera Blue Cross."

Premera' claim of privilege is sustained. The redacted portions of the minutes reflect reports related to legal issues, legal advice rendered, and decisions taken in light of legal advice rendered.

*PPRE 1025-1037. 12/12/01 Portion of meeting minutes marked Attorney-Client Privileged discussing advice of counsel (Domeika, Milo) re: government affairs/litigation. Produced as 0000054-0000056: John Domeika-Premera Legal-Attorney.*

This document is the minutes of the Premera Board meeting held December 12, 2001. Mr. Domeika represents that the minutes were produced in response to data requests WA 06, B102, B103 and B113, except for the redaction of PPRE 1033-1035 (pages 7-9), which refer to the presentations of counsel and to litigation.

Premera's claim of privilege is sustained. The redacted portions of the minutes reflect reports related to legal issues, legal advice rendered, and decisions taken in light of legal advice rendered.

*PPRE 1038-1045. 12/11/01 Portions of meeting minutes marked Attorney-Client Privileged summarizing communication with counsel (Milo) re: business recovery plan/government affairs. Produced as 0025863-0025870: John Domeika-Premera Legal-Attorney.*

This document is the minutes of the Premera Investment, Audit & Compliance Committee meeting of December 11, 2001. Mr. Domeika represents that these minutes have already been produced in response to data requests WA 06, B102, B103 and B113, except for the redaction of PPRE 1043-1044 (pages 6-7), which refer to discussions by counsel of legal issues.

Premera shall produce this document unredacted. The redacted portion is a presentation related to the Medicare Part A program by Nabil Istafanous, Vice President, Compliance, which discusses of financial impact. Although Mr. Istafanous was trained as a lawyer, this does not appear to have been his role at Premera. The presentation relates to a business purpose, and not to legal advice rendered.

*PPRE 1046-1060. 08/08/01 Portions of meeting minutes marked Attorney-Client Privileged discussing advice of counsel (Domeika) re: government affairs/litigation. Produced as 0000074-0000077: John Domeika-Premera Legal-Attorney.*

This document is the minutes of the Premera Board meeting held on August 8,, 2001. Mr. Domeika represents that these minutes have already been produced in response to data requests WA 06, B102, B103 and B113, except for the redaction of portions of PPRE 1055 (page 10, paragraphs 2-3) and PPRE 1058 (page 13, paragraphs 1-2), which reference discussions by counsel of legal issues.

Premera's claim of privilege is sustained. The redacted portions of the minutes appear to concern presentations by counsel related to legal issues.

*PPRE 1061-1065. 08/07/01 Portions of meeting minutes marked Attorney-Client Privileged discussing advice of counsel (Domeika) re: business recovery plan/government affairs. Produced as 0025871-0025875: John Domeika-Premera Legal-Attorney.*

This document is the minutes of the meeting of the Investment, Audit & Compliance Committee held August 7, 2001. Mr. Domeika represents that these minutes have been produced in response to data requests WA 06, B102, B103 and B113, except for the redaction of portions of PPRE (page 2, paragraph 1) and PPRE 1063 (page 3, paragraphs 4-6), which reference discussions by counsel of legal issues.

Premera's claim of privilege is sustained. The redacted portions of the minutes appear to relate to legal issues and to the consideration of business decisions in light of such legal issues.

*PPRE 1066-1083. 05/09/01 Portion of meeting minutes marked Attorney-Client Privileged discussing advice of counsel (Domeika) re: government affairs. Produced as 0000092-0000093: Yori Milo-Premera Legal-Attorney.*

This document is the minutes of the Premera Board meeting held May 9, 2001. Mr. Domeika represents that these minutes have been produced in response to data requests WA 06, B102, B103 and B113, except for the redaction of portions of PPRE 1078-1079 (page 13, paragraph 4, continuing to the top of page 14), which relate to legal strategy.

Premera's claim of privilege is sustained. The redacted portion of the minutes reflects legal analysis by counsel.

*PPRE 1084-1089. 05/08/01 Portion of meeting minutes marked Attorney-Client Privileged discussing advice of counsel (Domeika) re: government affairs. Produced as 0025876-0025881: John Domeika-Premera Legal –Attorney.*

This document is the minutes of the meeting of the Premera Investment, Audit & Compliance Committee held on May 8, 2001. Mr. Domeika represents that the minutes were produced in response to data requests WA 06, B102, B103 and B113, except for the redaction of a portion of PPRE 1087 (page 4, paragraphs 1-2), which refer to legal presentations by counsel.

Premera's claim of privilege is sustained. The redacted portions appear to relate to the advice of counsel (based in part on the use by counsel of consultants necessary to the rendering of legal advice) and to the consideration of business decisions in light of such legal advice.

*PPRE 1090-1107. 12/06/00 Portions of meeting minutes marked Attorney-Client Privileged discussing advice of counsel (Domeika, Milo) re: HealthPlus/litigation updates. Produced as 0025966-0025983: Yori Milo-Premera Legal-Attorney.*

This document is the minutes of the Premera Board meeting held on December 6, 2000. Mr. Domeika represents that these minutes have been produced in response to data requests WA 06, B102, B103 and B113, except for portions of PPRE 1097-1098 (page 8, paragraph 2-5 to page 9 paragraph 2) and PPRE 1099-1100 (page 10, paragraph 2 to page 11 paragraph 9), which reflect discussions by counsel of legal issues.



Premera's claim of privilege is sustained as to most redacted portions of the minutes, which appear reflect discussion by counsel of litigation and analysis by counsel of business options intertwined with such legal issues. Premera shall produce PPRE 1100 without redactions. Although Board action followed a discussion that included the consideration of legal issues, disclosure of the resolution would not reveal legal advice rendered.

*PPRE 1108-1127. 08/16/00 Portions of meeting minutes marked Attorney-Client Privileged discussing advice of counsel (Milo) re: risk management litigation updates. Produced as 0025946-1125965: Yori Milo-Premera Legal-Attorney.*

This document is the minutes of the Premera Blue Cross Board held on August 16, 2000. Mr. Domeika represents that these minutes have been produced in response to data requests WA 06, B102, B103 and B113, except for PPRE 1118-1119, paragraph 1-3, and PPRE 1122, paragraph 3-6, which refer to discussions by counsel. (Mr. Domeika acknowledges that, upon review, page 15, paragraph 5, dealing with a proposed sale/leaseback transaction, is not privileged.)

Premera's claim of privilege is sustained. The redacted portions of the minutes reflect reports related to litigation and to legal considerations related to strategic issues. *Except that*, Premera shall produce a version PPRE 1122 (page 15) showing paragraph 5 re sale/leaseback.

*PPRE 1128-1227. 05/01/02 Steering Committee meeting materials marked Attorney-Client Privileged containing legal advice re: conversion transaction: John Domeika-Premera Legal-Attorney.*

These documents are materials related to a meeting of the Steering Committee held on May 1, 2002. According to Mr. Domeika, the general purpose of the meeting was to prepare for the May 14, 2002 Board meeting, at which time the Board was to consider the process for the proposed conversion.

Premera's claim of privilege is sustained as to PPRE 1151-1202, which consists of draft presentation slides prepared by internal and outside counsel related to the structure of the proposed conversion and the relationship of various involved entities. These materials relate to the rendering of legal advice.

Premera shall produce the remainder of these documents. PPRE 1137 is the agenda for the Steering Committee meeting, which does not relate to the rendering of legal advice. PPRE 1147-1149 set forth Premera's priorities with respect to contemplated negotiations with state officials. Such stated priorities, including "guiding principles," relate dominantly to a review of business rather than legal considerations, with Mr. Domeika in the role of business advisor or summarizer, not counsel. The materials do not appear to have been prepared in anticipation of litigation, but rather as part of Premera's business evaluation of conversion.

PPRE 1203-1219 are draft presentation slides related to the Communication Plan for the announcement of Premera's intent to convert. These materials reflect the consideration of public relations issues that do not appear to facilitate the rendering of legal services or to be responsive to attorney direction related to legal issues.

PPRE 1220-1227 are presentation slides including an Employee Communications Plan, agenda, timeline and Business Case document for the May 14, 2002 Board meeting. Although Mr. Domeika states that he reviewed these slides "for purposes of providing

legal advice and consultation with respect to their content,” the slides themselves do not appear to relate to legal issues or to reflect legal advice rendered. The fact that otherwise non-privileged materials such as agendas may pass through an attorney’s hands before they are adopted does not cloak such materials with privilege.

*PPRE 1228-1369. 01/03/02 Steering Committee meeting materials marked Attorney-Client Privileged containing legal advice re: trust issues communication plans and legislative issues: Kari Glover-PG&E; Yori Milo-Premera Legal-Attorney.*

According to Mr. Domeika, these materials were reviewed at a Steering Committee meeting held January 3, 2002. for purposes of providing legal analysis with respect to due diligence.

Premera’s claim of privilege is sustained. Though not all of the materials reflect legal issues or analysis on their face, this ruling is based on counsel’s representation that the materials were reviewed by the Steering Committee as part of a discussion of legal issues.

*PPRE 1370-1371. 03/05/03 Steering Committee materials marked Attorney-Client Privileged containing agenda for meeting with counsel re: conversion issues: John Domeika-Premera Legal-Attorney.*

This document is an agenda for the Steering Committee meeting held on March 5, 2003 that is focused on conversion hearing issues, with attached listing of issues related to the conversion proceeding, which was prepared by counsel.

Premera’s claim of privilege is sustained. The agenda and issues list are related to the pending conversion proceedings, appear to reflect the consideration of legal issues,

and were prepared in anticipation of the already commenced conversion proceeding and related litigation.

*PPRE 1372. 10/29/01 Meeting agenda marked Attorney-Client Privileged discussing issues for review by counsel re: conversion transaction: John Domeika-Premera Legal-Attorney.*

This document is a list of issues for an October 30, 2001 meeting attended by internal and outside counsel and Premera's Senior Vice President for Legislative Affairs to develop legal strategy consistent with political and legislative matters.

Premera's claim of privilege is sustained. Considering the attendees, the issues appear to relate to the rendering of legal advice and to the coordination of legal with political issues.

*PPRE 1373-1380. 05/14/02 Presentation marked Attorney-Client Privileged containing legal advice with attached transmittal form re: transaction priorities: Yori Milo-Premera Legal-Attorney.*

This document consists of materials for counsel's presentation to the May 14, 2002 Board meeting.

Premera's claim of privilege is sustained. These materials, though not clearly related to legal issues, are consistent with Mr. Domeika's representation that the presentation of counsel was to analyze the events that could affect Premera's legal strategy in anticipation of upcoming conversion proceedings.

*PPRE 1381-1389. 10/24/02 Email forwarding attached material compiled at request of counsel re: value of service marks/IPO: Dino Fusco-Goldman Sachs-Consultant.*

This document is an email with attachments provided at the request of Mr. Milo and Mr. Domeika to assist them in advising Premera management as to legal strategy for addressing certain issues at regulatory hearings.

Premera's claim of privilege is sustained. This document was obtained by counsel as part of counsel's communications with outside investment banking professionals necessary for their representation of Premera and reflects attorney work product in anticipation of litigation.

*PPRE 1390-1392. 05/15/00 Matrix containing legal advice re: charitable trust: Katherine Andrews-Premera –Attorney.*

This document is a matrix prepared by counsel related to legal issues with respect to conversion legislation.

Premera's claim of privilege is sustained. This document reflects legal analysis by counsel.

*PPRE 1393-1395. 00/00/00 Matrix containing legal advice re: charitable foundations: Andrew Gladin-Sullivan & Cromwell-Outside Counsel.*

This document is a matrix prepared by outside counsel at Mr. Domeika's request.

Premera's claim of privilege is sustained. This document reflects analysis by outside counsel to assist Mr. Domeika in providing legal advice to Premera.

*PPRE 1396-1398. 03/12/03 Email thread marked Attorney-Client Privileged and Attorney Work Product requesting legal advice and containing advice of tax counsel re: licensing costs: Richard Tupper-PG&E.*

This document is an email thread forwarded to Mr. Domeika by Mr. Zommick, Premera's Tax Manager.

Premera shall produce this document. The substantive communication was a technical memo from the National Tax Department of Ernst & Young provided to Mr. Zommick which does not appear to be responsive to the request of counsel for tax advice to assist counsel in rendering legal advice. Instead, the communication appears dominantly to be a straightforward tax professional-to-tax professional analysis of a section of the Internal Revenue Code.

*PPRE 1399-1466. 03/12/03 Email thread marked Attorney-Client Privileged requesting legal advice and containing advice of tax counsel with attached draft response and exhibits re: information requests/conversion transaction: Ernest Achtien, Peter Cangany, Joseph Dolobof and Kenneth Tracy-Ernst & Young-Consultants; Peter Buck and John Domeika-Premera Legal-Attorneys; Larry Zommick-Premera.*

This document consists of draft responses to questions raised by the States' Consultants.

Premera's claim of privilege is sustained. This email thread, with draft documents, is consistent with Mr. Domeika's representation that the documents were provided to counsel for purposes of his rendering legal analysis and advice to Premera management.

*PPRE 1467-1472. 02/12/02 Portion of meeting minutes marked Attorney-Client Privileged summarizing communication with counsel re: compliance risks. Produced as 000025646-000025647: John Domeika-Premera Legal-Attorney.*

This document is the minutes of the meeting of the Investment, Audit and Compliance Committee of the Premera Board held on February 12, 2002. Mr. Domeika represents that these minutes have already been produced in response to data requests

WA 06, B102, B103 and B113, except for the redaction of PPRE 1468 (page 2, paragraph 6) and PPRE 1469 (page 3, continuation of paragraph and first full paragraph) that refer to a report by Premera's compliance officer, Nabil Istafanous.

Premera shall produce unredacted versions of PPRE 1468 and 1469. Mr. Domeika represents that Mr. Istafanous was educated as a lawyer, but he does not appear to have functioned, at least with respect to the redacted portion of the minutes, either as a lawyer rendering legal advice or in aid to the rendering of legal advice by counsel.

*PPRE 1473-1479. 02/12/02 Portion of meeting minutes marked Attorney-Client Privileged summarizing communication with counsel re: compliance risks. Produced as 000025735-000025737: John Domeika-Premera Legal-Attorney.*

This document is the minutes of the Premera Blue Cross Investment, Audit & Compliance Committee meeting, identical to PPRE 1467-1472, except for the caption "Premera Blue Cross" in place of "Premera."

Premera shall produce unredacted versions of PPRE 1474-1475

*PPRE 1480-1488. 12/11/01 Portions of meeting minutes marked Attorney-Client Privileged summarizing communication with counsel (Milo) re: business recovery plan/Medicare. Produced as 000025793-000025801: John Domeika-Premera Legal-Attorney.*

This document is the minutes of the Premera Blue Cross Investment, Audit & Compliance Committee meeting held December 11, 2001. Mr. Domeika represents that these minutes have already been produced in response to data requests WA 06, B102, B103 and B113, except for the redaction of portions of PPRE 1481 (page 2) and PPRE 1485-1486 (pages 7-8), which refer to discussions involving counsel.

Premera shall produce unredacted versions of PPRE 1481, 1485 and 1486. The redacted portion of PPRE 1481 reflects Mr. Barlow's review of business recovery plans, to be monitored by Premera's executive management group. Though Mr. Domeika represents that similar plans have been litigated in the past, the presentation does not reflect the participation of counsel or reference legal advice sought or given. That litigation of related issues may have occurred in other cases does not transform the discussion by non-lawyers of business contingencies into being attorney-client privileged or attorney work product in anticipation of litigation.

The redacted portions of PPRE 1485-1486 reflect the report of Mr. Istafanous on activities related the Medicare Part A. The presentation does not reflect the participation of counsel or reference either legal advice or legal strategy.

*PPRE 1489-1493. 8/7/01 Premera Blue Cross Investment, Audit & Compliance Committee Minutes.*

These minutes are not referenced in Mr. Domeika's declaration, but were provided for *in camera* inspection. Consistent with the form of other documents produced for *in camera* inspection, it appears that these minutes have already been produced as 25802-25806, except for the redaction of portions of pages 2 and 3.

Premera's claim of privilege is sustained. The redacted portions reflect the participation of Mr. Domeika in the discussion. Though these portions do not directly reflect legal advice rendered, considered in light of Mr. Domeika's participation as counsel in similar discussions, the redacted portions relate to legal advice rendered.

*PPRE 1494-1499. 5/8/01 Premera Blue Cross Investment, Audit & Compliance Committee Minutes.*



These minutes are not referenced in Mr. Domeika's declaration, but were provided for *in camera* inspection. Consistent with the form of other documents provided for *in camera* inspection, these minutes appear to have been provided as 25807-25812, except for the redaction of a portion of page 4.

Premera's claim of privilege is sustained. The redacted portions reflect participation by counsel consistent with providing legal advice.

*PPRE 1500-1501. 10/28/02 Email thread marked Attorney-Client Privileged communicating information requested by counsel and soliciting information sufficient to provide legal advice re: OIC case management order. Produced as 0032689-0032691: Robert King-Goldman Sachs-Consultant.*

This document is an email thread containing communications related to Mr. Domeika's communications with Premera's investment banking advisors.

Premera's claim of privilege is sustained. This document is consistent with Mr. Domeika's representation that these communications with Goldman Sachs were necessary to his rendering of legal advice to the Premera Board and in anticipation of upcoming conversion hearings and related litigation.

*PPRE 1502-1507. 03/06/03 Portions of email thread marked Attorney-Client Privileged containing legal advice with attached memo containing advice of tax counsel re: real estate excise tax. Produced as 0032692-0032698: Gerald Swanson-Ernst & Young-Consultant.*

This document is an email thread and attached document concerning tax implications of the proposed conversion, which includes PPRE 13-20.

Premera's claim of privilege is sustained. Mr. Swanson functioned, at least for purposes of this document and PPRE 13-20, as a tax advisor necessary to permit Premera's attorneys to render appropriate legal advice. The emails with Mr. Domeika support the assertions that Mr. Swanson's primary role in this instance was to assist counsel.

*PPRE 1508-1526. 09/09/01 Portion of presentation marked Attorney-Client Privileged discussing advice of counsel re: conversion. Produced as 000016917-000016922: John Domeika-Premera Legal-Attorney.*

This document is a set of slides presented to the Premera Board at its retreat held on September 9, 2001. Mr. Domeika represents that the slides have already been produced in response to data request WA 04, except for the redaction of slides which he helped to prepare and present which are related to tax and political issues.

Premera shall produce these documents. These slides appear to relate primarily to the business evaluation by Premera of its capital planning options. Though tax issues might become a source of controversy with the IRS, this inchoate possibility does not justify characterizing the slide related to a tax issue as prepared in anticipation of litigation. Mr. Domeika's participation in the preparation and presentation of the slides, without a showing that such participation and presentation was in his role as counsel providing legal advice, does not support a claim of privilege.

*PPRE 1527-1529. 11/15/02 Portions of index discussing issues under review by counsel re: internal audits. Produced as 000007322-00007324: Amy Olsen-Veatch-Premera Legal.*

This document is a listing of reports of internal audits conducted by Premera's Internal Audit Department during 2001 and 2002.

Premera's claim of privilege is sustained. The titles of the omitted audit reports appear to be consistent with Mr. Domeika representation that they relate to legal matters as to which Premera's internal counsel requested the Internal Audit Departments' assistance.

*PPRE 1530-1535. 05/14/02 Portion of meeting minutes discussing confidential litigation claims. Produced as 000000025: John Domeika-Premera Legal-Attorney.*

This document is the minutes of the special meeting of the Premera Board held on May 14, 2002. Mr. Domeika represents that this document was produced in response to data requests WA 06, B102, B103 and B113, except for the redaction of a phrase at PPRE 1531 (page 2).

Premera shall produce PPRE 1531 without redaction. The redacted portion references a comment by Brian Ancell, Executive Vice President, Health Care Services and Strategic Development. The comment does not reflect legal advice requested or rendered or that it was made in anticipation of litigation.

*PPRE 1536-1543. 05/14/02 Portion of presentation discussing advice of counsel re: litigation update. Produced as 000016860: John Domeika-Premera Legal-Attorney.*

These documents consist of a set of slides presented to the Premera Board at its meeting held on May 14, 2002. Mr. Domeika represents that he and Mr. Milo prepared the slides, which set forth priorities, principles and critical events that counsel identified as key to Premera's legal strategy.

Premera shall produce these documents. The slides primarily reflect business, not legal, analysis, and reflect the functioning of Mr. Milo and Mr. Domeika in the role of business advisors or business discussion leaders, not as attorneys rendering legal advice inextricably intertwined with business advice. (E.g., one slide, PPRE 1536, refers to “Capital Planning—Transaction Priorities,” and other slides refer to “Guiding Principles” including “mission.”)

*PPRE 1544-1553. 12/11/02 Portion of meeting minutes marked Attorney-Client Privileged discussing advice of counsel (Domeika, Milo) re: conversion/litigation. Produced as 32509-32518: John Domeika-Premera Legal-Attorney.*

This document is the minutes of the Premera Board meeting held December 11, 2002. Mr. Domeika represents that the minutes have already been produced in response to data requests WA 06, B102, B103 and B113, except for the redaction of PPRE 1550 and a portion of PPRE 1551 (pages 7-8), which refer to an update and discussion by counsel of certain issues. (Mr. Domeika states that, upon review, he believes that the third paragraph on page 7 was redacted in error.)

Premera’s claim of privilege is sustained, except as to page 7, paragraph 3 (PPRE 1550), which shall be produced. The other redacted presentations reflect the rendering of legal advice, business decisions taken after examining such legal advice, and work product in anticipation of actual or likely litigation.

*PPRE 1554-1563. 12/11/02 Portion of meeting minutes marked Attorney-Client Privileged discussing advice of counsel (Domeika, Milo) re: conversion/litigation. Produced as 32499-32508: John Domeika-Premera Legal-Attorney.*

This document is the minutes of the Premera Blue Cross Board meeting December 11, 2002. These minutes are identical to PPRE 1544-1553, except for the caption “Premera Blue Cross” instead of “Premera.”

Premera’s claim of privilege is sustained, except that Premera shall produce page 7, paragraph 3 (PPRE 1560).

*PPRE 1564-1567. 12/10/02 Portion of meeting minutes marked Attorney-Client Privileged discussing advice of counsel (Milo) re: personnel/litigation. Produced as 32423-32526: Yori Milo-Premera Legal-Attorney.*

This document is the minutes of the Premera Governance Committee held December 10, 2002. Mr. Domeika represents that this document has already been produced, except for a portion of page 4, PPRE 1567, which reflects to a presentation by Mr. Milo related to personnel matters.

Premera’s claim of privilege is sustained. The redacted portion of the minutes is consistent with Mr. Domeika’s representation that Mr. Milo’s presentation related to actual and potential legal issues concerning employment actions taken by Premera.

*PPRE 1568-1571. 12/10/02 Portion of meeting minutes marked Attorney-Client Privileged discussing advice of counsel (Milo) re: personnel/litigation. Produced as 32519-32522: Yori Milo-Premera Legal-Attorney.*

This document is the minutes of the Premera Blue Cross Governance Committee meeting held on December 10, 2002. These minutes are identical to PPRE 1564-1567, except for the caption “Premera Blue Cross” in place of “Premera.”

Premera’s claim of privilege is sustained.

*PPRE 1572-1573. 03/24/03 Email marked Attorney-Client Privileged containing advice of tax counsel re: conversion transaction; Yori Milo-Premera Legal-Attorney.*

This document is an email from Gerald Swanson, a tax accountant with Ernst & Young, to Mr. Zommick, Premera's Tax Manager, and Mr. Domeika. The email provides an update on the same issues with which PPRE 13-20 is concerned.

Premera's claim of privilege is sustained. This document is consistent with Mr. Domeika's representation that this communication was necessary to permit Mr. Domeika to render legal advice.

*PPRE 1574-1582. 03/26/03 Presentation marked Attorney-Client Privileged containing legal advice re: conversion transaction: John Domeika and Yori Milo-Premera Legal-Attorneys.*

This document is a set of presentation materials that Mr. Milo and Mr. Domeika prepared for and used at a meeting of Premera's corporate officers held March 26, 2003.

Premera's claim of privilege is sustained. These materials relate to legal updates and advice by counsel as to the pending conversion proceeding and were made in anticipation of actual or reasonably expected litigation.

*PPRE 1583-1630. 04/09/03 Email with attached draft memos, all marked Attorney-Client Privileged, containing advice of tax counsel re: conversion transaction: Kenneth Tracy-Ernst & Young-Consultant.*

These documents are an email from Ken Tracy, a tax accountant with Ernst & Young, to Mr. Zommick, Premera's Tax Manager, Mr. Domeika, and others (mainly Ernst & Young personnel), attaching a draft tax opinion letter for Mr. Domeika's review and comment.

Premera's claim of privilege is sustained. Mr. Domeika represents that the opinion letter was prepared by Ernst & Young pursuant to his request, to assist him in providing legal analysis and advice to Premera and in anticipation of IRS litigation. The draft is consistent with this representation and was prepared in the context of active conversion proceedings.

*PPRE 1631-1632. 04/18/03 Draft presentation marked Attorney-Client Privileged/Work Product discussing advice of tax counsel in anticipation of litigation re: conversion transaction: John Domeika-Premera Legal-Attorney; Kent Marquardt and Larry Zommick-Premera.*

This document is an analysis by Premera and Ernst & Young of a tax issue, which is related to PPRE 1583-1630.

Premera's claim of privilege is sustained. This document appears to have been prepared to assist Mr. Domeika as counsel, in the context of active conversion proceedings.

*PPRE 1633-1727. 02/06/02 Steering Committee meeting materials marked Attorney-Client Privileged containing legal advice and discussing advice of tax counsel re: conversion transaction: Brian Ancell and Kent Marquardt-Premera; John Domeika and Yori Milo-Premera Legal-Attorneys.*

This document consists of presentation materials used during a February 6, 2002 meeting with a Premera Board member who was unable to be present at the January 24, 2002 Board meeting. Mr. Domeika agrees that PPRE 1633-1690 and 1722-1727, which he states are almost entirely duplicates of materials that have already been provided in

response to data request WA 4, are not privileged. He asserts that PPRE 1691-1721, described under PPRE 140-170, are privileged.

Premera's claim of privilege is sustained as to PPRE 1691-1721. These slides were prepared and presented by Mr. Milo and Mr. Domeika at the January 24, 2002 Board meeting. The slides' dominant concern is legal issues associated with the structure of the proposed conversion. Premera shall produce PPRE 1633-1690 and 1722-1727.

*PPRE 1728-1738. 04/29/03 Presentation marked Attorney-Client Privileged containing legal advice re: conversion transaction: John Domeika and Yori Milo-Premera Legal-Attorneys.*

This document is a set of presentation slides related to conversion matters prepared by Mr. Milo and Mr. Domeika for Mr. Domeika's briefing of the Premera Underwriting Department on April 29, 2003.

Premera's claim of privilege is sustained. This document reflects a legal status summary by counsel and relates to pending administrative proceedings and other litigation.

*PPRE 1820-1829. 12/05/00 Portion of meeting minutes marked Attorney-Client Privileged discussing advice of counsel (Domeika) re: HealthPlus/tax law. Produced as 0022402-0022411: Yori Milo and John Domeika-Premera Legal-Attorneys.*

This document is the minutes of a meeting of the Premera Board's Executive and Governance Committee held on December 5, 2000. Mr. Domeika represents that the minutes have already been produced, except for the redaction of portions of pages 6-8, PPRE 1825-1827, which reflect Mr. Domeika's presentation of legal issues.



Premera's claim of privilege is sustained. The minutes support Mr. Domeika's assertion that his presentation related to legal issues and to business decisions to be recommended in the context of such legal issues.

*PPRE 1830-1838. 08/15/00 Portion of meeting minutes marked Attorney-Client Privileged discussing advice of counsel re: HealthPlus. Produced as 0022416-0022424: Yori Milo and John Domeika-Premera Legal-Attorneys.*

This document is the minutes of a meeting of Premera's Executive and Governance Committee held August 15, 2000. Mr. Domeika represents that this document has already been produced, except for the redaction of a portion of page 8 (PPRE 1837), reflecting Mr. Domeika's advice to the committee.

Premera shall produce this document. Mr. Domeika's presentation appears to have been in his role as business advisor, dealing with market factors and employee preferences rather than in his role as counsel, rendering legal advice.

The following entries from Premera's Third Supplemental privilege log relate to documents created during the past several months, at a time when the administrative hearings were in immediate prospect and related litigation had commenced. All of the documents relate directly or indirectly to Premera's hearing preparation; none are hereby ordered to be produced.

*PPRE 1917-1918. 6/19/03 Email thread containing and requesting legal advice, with attached draft memo: John Cake-Premera; John Domeika-Premera Legal.*

This document is an email thread concerning a draft document prepared as a supplemental response to data request E506.

Premera's claim of privilege is sustained. This document reflects the advice of counsel and appears to have been created in anticipation of pending administrative proceedings as well as other anticipated litigation.

*PPRE 1919-1920. 6/16/03 Email thread requesting legal advice: John Cake-Premera.*

This document is the originating email and attachment identified at PPRE 1917-1918.

This document requests the advice of counsel and appears to have been created in anticipation of pending administrative proceedings and other anticipated litigation.

*PPRE 1921-1924. 7/10/03 Steering Committee meeting materials with agenda for meeting with counsel and notes re advice of counsel: John Cake-Premera; John Domeika-Premera Legal.*

This document includes the Steering Committee meeting agenda and meeting notes taken by John Cake.

Premera's claim of privilege is sustained. These documents reflect discussions related to pending administrative proceedings and other anticipated litigation.

*PPRE 1925-1936. 06/04/03 Steering Committee meeting materials with agenda for meeting with counsel and notes re advice of counsel: John Cake-Premera; John Domeika-Premera Legal.*

These documents are materials distributed to Steering Committee members at a meeting held June 4, 2003, including agenda, notes and reports.

Premera's claim of privilege is sustained. These documents were created in anticipation of pending administrative proceedings and other litigation.

*PPRE 1937-1939. 05/29/03 Steering Committee meeting materials containing agenda for meeting with counsel and notes discussing advice of counsel: John Cake-Premera; John Domeika-Premera Legal.*

These documents are related to a Steering Committee meeting held on May 29, 2003.

Premera's claim of privilege is sustained. These documents were created in anticipation of pending administrative proceedings and other litigation.

*PPRE 1940-1942. 07/28/03 Steering Committee meeting materials containing agenda for meeting with counsel and notes discussing advice of counsel: John Cake-Premera; John Domeika-Premera Legal.*

These documents are Steering Committee materials for a meeting held on June 4, 2003.

Premera's claim of privilege is sustained. These documents were created in anticipation of pending administrative proceedings and other litigation and include references to legal analyses by counsel.

*PPRE 1943-1945. 06/11/03 Email thread with draft memo: Peter Buck-Premera Legal; John Cake Premera.*

This document is an email thread related to the subject of PPRE 1917-1918.

Premera's claim of privilege is sustained. This document reflects the advice of counsel and appears to have been created in anticipation of pending administrative proceedings and other anticipated litigation.

*PPRE 1946-1948. 04/11/03 Draft analysis prepared at direction of counsel: Dino Fusco-Goldman Sachs-Consultant.*

This document is an email thread related to the subject of PPRE 1917-1918.

Premiera's claim of privilege is sustained. This document reflects the advice of counsel and appears to have been created in anticipation of pending administrative proceedings and other anticipated litigation.

*PPRE 1949. 04/09/03 Email communicating information at request of counsel: Dino Fusco-Goldman Sachs-Consultant.*

This document is an email thread related to the subject of PPRE 1917-1918.

Premiera's claim of privilege is sustained. This document reflects the advice of counsel and appears to have been created in anticipation of pending administrative proceedings and other anticipated litigation.

*PPRE 1950. 04/09/03 Email communicating information at request of counsel. Dino Fusco-Goldman Sachs-Consultant.*

This document is an email thread related to the subject of PPRE 1917-1918.

Premiera's claim of privilege is sustained. This document reflects the advice of counsel and appears to have been created in anticipation of pending administrative proceedings and other anticipated litigation.

*PPRE 1951. 07/06/03 Email thread containing advice of tax counsel: Joseph Doloboff-Ernst & Young-Consultant.*

This document is an email thread related to tax issues.

Premiera's claim of privilege is sustained. This document reflects the advice of counsel and appears to have been created in anticipation of pending administrative proceedings and other anticipated litigation.

DATED this     day of August, 2003.

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George Finkle  
Superior Court Judge (Retired)  
Special Master